

APPEAL NO. 021460
FILED JULY 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 6, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to the fourth, fifth, and sixth quarter supplemental income benefits (SIBs). The claimant appeals, arguing that the hearing officer's determinations are not supported by the substantive evidence of the record as a whole and are so against the great weight and preponderance of the evidence as to be manifestly unjust. In its response, the respondent (carrier) maintains that both the testimonial and documentary evidence presented at the CCH support the hearing officer's determinations.

DECISION

Affirmed.

We first address claimant's general complaint that the hearing officer focused on the evidence that would support his biased opinion that the claimant had an ability to work. Upon a review of the record as a whole, we find no evidence of bias or prejudice on the part of the hearing officer. The claimant additionally argues that the Texas Worker's Compensation Commission (Commission) has improperly construed Section 408.142(a)(4) in the application of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(4) (Rule 130.102(d)(4)). We are without jurisdiction to find that a Commission rule is unconstitutional or in violation of another statute. Our statutory mandate in Section 410.203 is to review the hearing officer's decision under the 1989 Act. Whether a Commission rule is constitutional or is in violation of another statute is not properly before us and must be decided in a judicial, rather than administrative, forum, and we will not consider claimant's appeal on those grounds.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the fourth, fifth, and sixth quarters. At the hearing, it was undisputed that the claimant had not returned to work, had not searched for work during the relevant qualifying periods (April 13, 2001, through January 10, 2002), and was not enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission. The claimant was basing her entitlement to SIBs for the quarters at issue on an assertion of total inability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer found that the letter from the claimant's treating doctor dated August 27, 2001, constituted a medical narrative which specifically explained how the claimant's compensable injury caused a total inability to work during the relevant qualifying periods. However, the hearing officer additionally determined that there were other records admitted at the CCH which showed that the claimant is able to return to work. Review of the record reflects that the claimant has undergone a functional capacity evaluation (FCE). The FCE, dated January 23, 2001, reflects that the claimant could perform "medium/light" for activity above the waist and "light" physical demand level for activity below the waist. Additionally, the carrier-selected physician who performed the required medical examination agreed with the finding of the FCE that the claimant is capable of light to moderate work in a medical record dated August 15, 2001, after he reviewed the claimant's MRI. The hearing officer's determination that there were other records which showed that the claimant was able to return to work and that she is not entitled to fourth, fifth, and sixth quarter SIBs is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
VICE PRESIDENT OF ACE USA
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge